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9 WALGREEN CO.

10 **UNITED STATES DISTRICT COURT**

11 **IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 BARBARA HUBBARD,) Case No. 08-cv-0072 JM POR
13 Plaintiff,)
14 v.) **DEFENDANT, WALGREEN CO.'S,**
15 WALGREEN CO. dba WALGREENS) **ANSWER TO PLAINTIFF'S**
16 #06255; 1 HUNTER, LLC; 1 LAKE, LLC;) **COMPLAINT**
17 Defendants.) *Complaint Filed: 1/11/08*
18)
19)
20)

21 Defendant, Walgreen Co. ("Walgreens"), for its answer and affirmative defenses to
22 Plaintiff, Barbara Hubbard's ("Plaintiff" or "Hubbard"), Complaint, admits, denies, and sets forth
23 affirmative defenses as follows:

24 **SUMMARY**

25 1. Paragraph 1 contains no charging allegations, therefore no answer is necessary, and on
26 that basis the allegations of Paragraph 1 are denied.

27 2. Paragraph 2 contains no charging allegations, therefore no answer is necessary, and on
28 that basis the allegations of Paragraph 2 are denied.

JURISDICTION

3. Walgreens admits that venue and jurisdiction is proper in this Court.

4. Walgreens denies the allegations contained in Paragraph 4 of Plaintiff's Complaint on the
basis that it calls for a legal conclusion for which no answer is necessary.

1 5. Walgreens denies the allegations contained in Paragraph 5 of Plaintiff's Complaint on the
2 basis that it calls for a legal conclusion for which no answer is necessary.

3 **VENUE**

4 6. Walgreens admits that this case arises in San Diego County, California, and is therefore
5 properly assigned to the San Diego Division of the United States District Court, Southern District
6 of California.

7 **PARTIES**

8 7. Walgreens admits that it is a corporation and that it operates the store identified as
9 Number 06255 at 621 "I" Street, Chula Vista, California. Walgreens denies the remaining
10 allegations contained in this paragraph.

11 8. Walgreens is without sufficient information or knowledge to form a belief as to the truth
12 of the allegation that Hubbard has multiple conditions and requires the use of a motorized
13 wheelchair and mobility-equipped vehicle while traveling in public, or that Hubbard is
14 "physically disabled," and on that basis, denies this allegation. The remaining allegations
15 contained in Paragraph 8 contain legal conclusions for which no answer is necessary, and on that
16 basis the remaining allegations of Paragraph 8 are denied.

17 **FACTS**

18 9. Walgreens admits that the Store is a retail establishment and that it offers services to the
19 public. Walgreens denies the remaining allegations contained in Paragraph 9.

20 10. Walgreens is without sufficient information or knowledge to form a belief as to the truth
21 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on
22 that basis denies this allegation. The remaining allegations contained in Paragraph 10 contain
23 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these
24 allegations.

25 11. Walgreens is without sufficient information or knowledge to form a belief as to the truth
26 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on
27 that basis denies this allegation. The remaining allegations contained in Paragraph 11 contain

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1 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these
2 allegations.

3 12. Walgreens is without sufficient information or knowledge to form a belief as to the truth
4 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on
5 that basis denies this allegation. The remaining allegations contained in Paragraph 12 contain
6 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these
7 allegations.

8 13. Walgreens denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

9 14. Walgreens denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

10 15. Walgreens denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

11 **FIRST CLAIM**

12 **Americans with Disabilities Act of 1990**

13 Denial of "Full and Equal" Enjoyment and Use

14 16. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through
15 15, inclusive.

16 17. Paragraph 17 contains only legal conclusions, and as such, no answer is necessary, and on
17 that basis the allegations of Paragraph 17 are denied.

18 18. Walgreens denies the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19 Failure to Remove Architectural Barriers in an Existing Facility

20 19. Paragraph 19 contains only legal conclusions, and as such, no answer is necessary, and on
21 that basis the allegations of Paragraph 19 are denied.

22 20. Paragraph 20 contains only legal conclusions, and as such, no answer is necessary, and on
23 that basis the allegations of Paragraph 20 are denied.

24 21. Walgreens denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

25 22. Walgreens denies the allegations contained in Paragraph 22 of Plaintiff's Complaint.

26 Failure to Design and Construct an Accessible Facility

27 23. Walgreens is without sufficient information or knowledge to form a belief as to the truth
28 of the allegation that the Store was designed or constructed after January 26, 1992, and on that

1 basis denies this allegation. The remaining allegations contained in Paragraph 23 are only legal
2 conclusions, and as such, no answer is necessary, and on that basis the allegations of Paragraph 23
3 are denied.

4 24. Paragraph 24 contains only legal conclusions, and as such, no answer is necessary, and on
5 that basis the allegations of Paragraph 24 are denied.

6 25. Walgreens denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

7 Failure to Make an Altered Facility Accessible

8 26. Paragraph 26 contains only legal conclusions, and as such, no answer is necessary, and on
9 that basis the allegations of Paragraph 26 are denied.

10 27. Paragraph 27 contains only legal conclusions, and as such, no answer is necessary, and on
11 that basis the allegations of Paragraph 27 are denied.

12 28. Walgreens denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

13 Failure to Modify Existing Policies and Procedures

14 29. Paragraph 29 contains only legal conclusions, and as such, no answer is necessary, and on
15 that basis the allegations of Paragraph 29 are denied.

16 30. Walgreens denies the allegations contained in Paragraph 30 of Plaintiff's Complaint.

17 31. Paragraph 31 contains no charging allegations, therefore no answer is necessary.

18 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the
19 allegations of Paragraph 31 are denied.

20 32. Paragraph 32 contains no charging allegations, therefore no answer is necessary.

21 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the
22 allegations of Paragraph 32 are denied.

23 **SECOND CLAIM**

24 **Disabled Persons Act**

25 33. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through
26 32, inclusive.

27 34. Paragraph 34 contains no charging allegations, therefore no answer is necessary, and on
28 that basis the allegations of Paragraph 34 are denied.

1 35. Paragraph 35 contains no charging allegations, therefore no answer is necessary, and on
2 that basis the allegations of Paragraph 35 are denied.

3 36. Paragraph 36 contains only legal conclusions, and as such, no answer is necessary, and on
4 that basis the allegations of Paragraph 36 are denied.

5 37. Walgreens denies the allegations contained in Paragraph 37 of Plaintiff's Complaint.

6 38. Paragraph 38 contains no charging allegations, therefore no answer is necessary.
7 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the
8 allegations of Paragraph 38 are denied.

9 39. Paragraph 39 contains no charging allegations, therefore no answer is necessary.
10 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the
11 allegations of Paragraph 39 are denied.

12 **THIRD CLAIM**

13 **Unruh Civil Rights Act**

14 40. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through
15 39, inclusive.

16 41. Paragraph 41 contains no charging allegations, and as such, no answer is necessary, and
17 on that basis the allegations of Paragraph 41 are denied.

18 42. Paragraph 42 contains no charging allegations, therefore no answer is necessary, and on
19 that basis the allegations of Paragraph 42 are denied.

20 43. Paragraph 43 contains no charging allegations, therefore no answer is necessary, and on
21 that basis the allegations of Paragraph 43 are denied.

22 44. Paragraph 44 contains no charging allegations, therefore no answer is necessary, and on
23 that basis the allegations of Paragraph 44 are denied.

24 45. Paragraph 45 contains no charging allegations, therefore no answer is necessary, and on
25 that basis the allegations of Paragraph 45 are denied.

26 46. Walgreens denies that took any action, or failed to take any action that resulted in
27 Plaintiff's alleged damages. Walgreens denies that Plaintiff has been damaged, and further denies
28 that Plaintiff is entitled to any relief whatsoever.

1 47. Paragraph 47 contains no charging allegations, therefore no answer is necessary.
2 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the
3 allegations of Paragraph 47 are denied.

4 **FOURTH CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 48. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through
7 47, inclusive.

8 49. Paragraph 49 contains no charging allegations, therefore no answer is necessary, and on
9 that basis the allegations of Paragraph 49 are denied.

10 50. Paragraph 50 contains no charging allegations, therefore no answer is necessary, and on
11 that basis the allegations of Paragraph 50 are denied.

12 51. Paragraph 51 contains only legal conclusions, and as such, no answer is necessary, and on
13 that basis the allegations of Paragraph 51 are denied.

14 52. Paragraph 52 contains only legal conclusions, and as such, no answer is necessary, and on
15 that basis the allegations of Paragraph 52 are denied.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 As a first affirmative defense, Walgreens pleads that Plaintiff's Complaint and each and
19 every claim purportedly set forth therein, fails to state facts sufficient to constitute a claim or
20 claims upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 As a second affirmative defense, Walgreens pleads that Plaintiff's claims are barred, in whole or
23 in part, by the applicable statute of limitations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 As a third affirmative defense, Walgreens pleads that Plaintiff failed to exhaust all the
26 administrative remedies that were prerequisites to filing this action, and therefore this action is
27 barred.

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FOURTH AFFIRMATIVE DEFENSE

As a fourth affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

As a fifth affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, is barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

As a sixth affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, is barred and/or damages are limited or precluded by, the doctrine of after-acquired-evidence.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, is barred by the doctrines of estoppel and/or waiver.

EIGHTH AFFIRMATIVE DEFENSE

As an eighth affirmative defense, Walgreens pleads that damages, if any, were brought about by Plaintiff's own conduct, not the conduct of Walgreens or any of its supervisors, agents or employees.

NINTH AFFIRMATIVE DEFENSE

As a ninth affirmative defense, Walgreens pleads that California's laws regarding the conduct alleged in the Complaint, and each purported claim therein, are too vague to permit the imposition of punitive damages and thereby deny due process, impose criminal penalties without requisite constitutional protections, violate the Fourteenth Amendment of the United States Constitution, and place an unreasonable burden on interstate commerce.

TENTH AFFIRMATIVE DEFENSE

As a tenth affirmative defense, Walgreens pleads that any alleged damages were caused in whole or in part by the fault of another entity and/or party or nonparty.

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